

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

TAE HYUN KIM,

Plaintiff and Respondent,

v.

HANMI BANK,

Defendant and Appellant.

B170835

(Los Angeles County
Super. Ct. No. YC044846)

APPEAL from a judgment of the Superior Court of Los Angeles County,
William G. Willett, Judge. Affirmed.

Lee, Kim & Song, Jason S. J. Kim, Joon W. Song; Hanmi Bank Legal Department
and Justine Y. Roe for Defendant and Appellant.

Lee & Kaufman, David K. Lee, Martin J. Kaufman and Jason L. Weisberg for
Plaintiff and Respondent.

Defendant Hanmi Bank (Hanmi) appeals from a judgment in favor of plaintiff Tae Hyun Kim (Kim) on a cause of action for conversion. Hanmi argues Kim had no insurable interest in an insured home or in insurance proceeds that Hanmi allegedly converted. We find that Hanmi has no standing to challenge the insurability of Kim's interest. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

In or about January 2001, Kim and his wife purchased a homeowner's insurance policy on their home from Fire Insurance Exchange (FIE). At around the same time, the Kims' home sustained damage from water intrusion and mold contamination. The Kims submitted an insurance claim to FIE. FIE issued a check for \$39,417.95 payable to Kim, his wife, and Statewide Development, the contractor the Kims had hired to fix the damage. An FIE representative personally handed the check to Kun Houngh Pak, the principal of Statewide Development. Pak forged Kim's endorsement on the check, deposited it with Hanmi, and withdrew the proceeds.

In December 2002, the Kims sued FIE, Hanmi, and Pak on several causes of action, including negligence, fraud, and breach of contract. The Kims alleged that FIE negligently recommended Pak as a contractor, but that Pak was not a licensed contractor and did not do the repair work despite receiving full payment. In particular, the Kims alleged a cause of action for conversion against Pak and Hanmi based on the bank's acceptance of Pak's deposit of the check to his account without Kim's authorization or endorsement.

In a court trial, Hanmi presented undisputed evidence that Kim had transferred his community property interest in the Kims' home to his wife before the water and mold damage occurred, and that she had executed a work authorization agreement assigning all insurance proceeds to Statewide Development. On this basis, Hanmi argued that Kim's wife had no ownership or right to possession of the insurance proceeds since she had signed these away, and that Kim had no such rights because he had no insurable interest in the water-damaged home under Insurance Code sections 280 and 286.

The trial court ruled in favor of Hanmi as against Kim's wife, who did not appeal the judgment. The court also held that notwithstanding the statutes cited by Hanmi, Kim had an insurable interest in the check issued by FIE and was entitled to the full amount. It found Hanmi liable for conversion. Hanmi filed this timely appeal.

DISCUSSION

Hanmi argues that Kim cannot establish the elements of conversion since he had no insurable interest in the Kims' home, either at the time of the loss or when the alleged conversion occurred, because the insurance contract was void as to him.

A conversion is an act of dominion wrongfully exerted over another's personal property, contrary to that person's rights in the property. (*Messerall v. Fulwider* (1988) 199 Cal.App.3d 1324, 1329.) The elements of a cause of action for conversion are (1) plaintiff's ownership or right to possession of the property at the time of the conversion; (2) defendant's conversion by a wrongful act or disposition of plaintiff's property rights; and (3) damages. (*Ibid.*) The plaintiff has the burden of proof as to each of these elements. (See Evid. Code, § 500.)

Insurance Code section 280 provides a contract for insurance is void if the insured has no insurable interest. Section 286 of the same code provides that an interest in the property insured must exist when the insurance takes effect and when the loss occurs. Kim acknowledges that he had no property interest in the home at the time the loss occurred, and, apparently, none when the insurance policy took effect. Therefore, Hanmi argues, the contract was void, Kim had no right to the check or the insurance proceeds, and he cannot show the first element of conversion.

The problem with this argument is that under California law, only the insurer can raise the question of insurable interest; third parties have no standing to do so. (*In re Marriage of Bratton* (1994) 28 Cal.App.4th 791, 793, 794; *Jenkins v. Hill* (1939) 35 Cal.App.2d 521, 524; see also *Countrywide Home Loans, Inc. v. Tutungi* (1998) 66 Cal.App.4th 727, 732.) Here, FIE made the check payable to Kim along with the others

and did not challenge the insurability of Kim's interest in the home. Thus Hanmi cannot either.

DISPOSITION

The judgment is affirmed. Respondent is to have his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, Acting P.J.

We concur:

HASTINGS, J.

CURRY, J.